

CH2M HILL

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November 25, 2003

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Mr. Stan Valkosky
1516 Ninth Street, MS 9
Sacramento, CA 95814-5512

Subject: MID Electric Generation Station (MEGS), 03-SPPE-1
Applicant's Comments on the Proposed Decision

Dear Mr. Valkosky:

On behalf of Modesto Irrigation District, please find attached 12 copies and one original of the MID's comments on the Proposed Decision.

Sincerely,

CH2M HILL

A handwritten signature in blue ink, appearing to read "John L. Carrier".

John L. Carrier, J.D.
Program Manager

STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:

Small Power Plant Exemption for)
the Modesto Irrigation District)
Electric Generation Station (MEGS))

Docket No. 03-SPPE-01

APPLICANT'S COMMENTS ON PROPOSED DECISION

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Dated: November 25, 2003

**Small Power Plant Exemption for the Modesto Irrigation District
Electric Generation Station (MEGS)**

APPLICANT’S COMMENTS ON PROPOSED DECISION

In accordance with the Notice of Availability of the Proposed Decision/Notice of Intent to Adopt a Mitigated Negative Declaration dated November 7, 2003, issued by the Modesto Irrigation District Electric Generation Station (MEGS) Small Power Plant Exemption Committee (the “Committee”) of the California Energy Resources Conservation and Development Commission (the “Commission”), Applicant Modesto Irrigation District (“MID”) submits its comments to the Proposed Decision on MID’s Small Power Plan Exemption (“SPPE”) Application. MID appreciates the time and effort that the Committee has dedicated to this matter and believes that the Proposed Decision accurately concludes that all impacts attributable to the MEGS Project can be mitigated to insignificant levels. MID supports the Proposed Decision’s recommendation that the Commission act to exempt the MEGS Project from the Commission’s Application for Certification (“AFC”) licensing review process.

However, MID respectfully suggests that the evidence regarding the Project’s potential for significant impact on energy resources presented in this proceeding has not been fully considered and does not support the Committee’s proposed new Condition of Exemption (“COE”) ENERGY RESOURCES-1. No substantial evidence was submitted that supports a fair argument that the MEGS Project may have a significant effect on energy resources under any operating scenario. Rather, the evidence supports the conclusion that operation of the MEGS Project for over 8000 hours in a year would not constitute a wasteful or inefficient use of energy.

MID also believes that the proposed new language in COE NOISE-1 regarding evaluation and measurement of “pure-tone noise components,” is imprecise and creates unnecessary ambiguity for plant operation. MID recommends that the language of NOISE-1 be modified.

1. ENERGY RESOURCES

The evidence in this proceeding supports a conclusion that operation of the MEGS Project for over 8000 hours in a year would not constitute a wasteful or inefficient use of energy, and no limitation on the Project’s operating hours is necessary.

The Committee applied the “fair argument” standard in making its recommendation in the Proposed Decision. (Proposed Decision, p. 6.) The Committee notes that its task is only to

“determine whether substantial evidence exists in the record to support the prescribed fair argument.” (*Id.*) While MID has not agreed that the fair argument standard is properly applied, MID believes that even when applying this standard there is no substantial evidence of a potential impact from the MEGS Project on energy resources under any assumed operating scenario.

The Committee notes that the uncontroverted evidence of record establishes that MID needs peaking power and that the proposed simple-cycle configuration of the Project is the preferable means of providing this power. (Proposed Decision, p. 16.) The Committee concludes that the evidence also establishes that the Project’s fuel consumption will not adversely affect existing natural gas supplies and that additional supply capacity will not be needed. The Committee questions, however, whether permitting the Project’s simple-cycle facilities to allow 8760 hours of operation per year would constitute a wasteful and inefficient use of energy. (*Id.* at 16-17.)

The record is replete with evidence of MID’s objectives in permitting the Project to allow it to operate for over 8000 hours a year. The evidence is also clear that while such operation is possible on occasion, in the event a number of unusual circumstances arise simultaneously to require such power, MID does not intend to operate the MEGS Project as a continuous baseload project on an ongoing basis. (This evidence is fully reviewed in Applicant’s Post-Hearing Opening Brief dated October 1, 2003 (“MID’s Brief”), pp. 7-15.) In fact, MID recognized that to do so would require a reevaluation of MID’s resource alternatives. MID noted that it competes directly with other power generators and electric utilities in the open market, and that its resources must be economically competitive. (*Id.*) MID also noted that contrary to suggestions made in this proceeding, uneconomic costs of producing power cannot simply be distributed to MID’s ratepayers. (*Id.*) Thus, MID has strong incentives to avoid wasteful and inefficient use of energy. Furthermore, MID has agreed that it will monitor its operation of the MEGS Project to ensure that the need for alternatively configured resources is promptly recognized and addressed. (MID Brief, p. 15.)

The Committee has identified no evidence, substantial or otherwise, presented in this matter that the MEGS Project, contrary to MID’s objectives, could potentially “constitute a wasteful and inefficient use of energy,” even if permitted to operate 8760 hours a year. Rather, the Committee concludes that the “evidence is silent” on the extent of the Project’s impacts on

energy resources under such conditions. (Proposed Decision, p. 17.) MID disagrees with this conclusion. However, even if the evidence were silent on this point, such silence constitutes neither substantial evidence nor a fair argument that a significant environmental impact exists with respect to energy resources.

The Commission deliberately rejects MID's references to previous Decisions of the Commission on other simple-cycle projects with similar configurations and operational needs as MEGS. For example, in the Henrietta Peaker Project (01-AFC-18), located in Kings County, the owner proposed using two LM6000 SPRINT turbines in simple-cycle configuration generating 91.4 MW. (Commission Decision for Henrietta Peaker Project (the "Henrietta Decision"), p. 17.) Similarly, the owner of the Tracy Peaker Project (01-AFC-16), located in San Joaquin County, proposed using two natural gas fired General Electric Model PG7121 (EA) combustion turbine generators operating in simple-cycle mode. (Commission Decision for Tracy Peaker Project (the "Tracy Decision"), p. 2.) The Tracy project would generate a nominal 169 MW (Tracy Decision, p. 14).

Disregarding the similarities of these projects to MEGS, the Committee ignored these prior Commission Decisions. The Commission found in those cases, using the same criteria as are applied to MEGS, that significant impacts would result if a project uses large amounts of energy in a wasteful, inefficient or unnecessary manner. (Henrietta Decision, p. 187; Tracy Decision, p. 59.) However, in those cases, the Commission concluded that these simple-cycle facilities permitted to operate 8000 or more hours a year would NOT cause a significant adverse impact on energy resources.

In the Henrietta Decision, the Commission stated:

"Under expected project conditions, electricity will be generated at a full load efficiency of 39.2 percent LHV. This can be compared to the average fuel efficiency of a typical 1960s-era utility company baseload power plant, commonly used for peaking power, at approximately 35 percent LHV. The project's fuel efficiency compares favorably to other possible peaking technologies."

(Henrietta Decision, p. 188.)

Similarly in the Tracy Decision, the Commission made the following finding:

"The project will employ two GE Frame 7(EA) gas turbine generators nominally rated at 84.5 MW and an efficiency of 32.8 percent LHV. Although more efficient alternatives exist, the forces

of the competitive markets for electricity and natural gas, combined with the relatively small size (169 MW) of the project, ensure that no significant adverse impacts on energy resources will result from use of the GE Frame 7(EA) generators.”

(Tracy Decision, p. 62.)

In the case of MEGS, the Committee rejected the Henrietta and Tracy Decisions as not relevant. The Committee based its rejection of these Decisions on the fact that those projects underwent the Commission’s AFC review rather than an SPPE process. Such a distinction is immaterial and should not prevent the Committee from considering herein the findings in the Henrietta and Tracy project proceedings.

In both AFC and SPPE processes, the Commission is responsible for undertaking an environmental review of the proposed project to satisfy the requirements of the California Environmental Quality Act (“CEQA”). In each case the Commission acts as the lead agency under CEQA and is responsible for conducting a study of potential environmental impacts from the project. (Proposed Decision, p. 1.) The first step in either case is the completion of an Initial Study. CEQA requires an Initial Study be performed by the lead agency “to determine if the project may have a significant effect on the environment.” (Title 14, Cal. Code Reg., § 15063, subd. (a); Title 14, Cal. Code Reg., § 15000 *et seq.*, Appendix G.) Under CEQA, if an Initial Study concludes that there is substantial evidence that the project may cause a significant effect on the environment, an environmental impact report must be completed and the project can only be undertaken upon the making of certain findings and a statement of overriding considerations. (Pub. Res. Code, § 21081; Title 14, Cal. Code Reg., §§ 15063, subd. (b)(1), and 15091-15093.) Alternatively, if an Initial Study concludes that there is no substantial evidence that the project may cause a significant effect on the environment, a negative declaration may be adopted to support approval of the project. (Title 14, Cal. Code Reg., § 15063, subd. (b)(2).)

The Initial Study analysis is the same in either instance. Likewise, the Initial Study prepared during an AFC review (analogous to an environmental impact report process) is the same as the Initial Study prepared for an SPPE review (analogous to a negative declaration process). The technical analyses performed and conclusions drawn regarding the potential significance of environmental impacts, and the significance criteria used to determine a significant impact, are not affected by whether an environmental impact report or negative declaration is ultimately adopted. The measures used to perform the analysis in the Initial Study

and the significance criteria used are not dependent on the level of environmental scrutiny the project is determined to require after the completion of the Initial Study.

In this proceeding, MID submitted with its Application for an SPPE essentially the same level of information and analysis of energy resources as would be required in submitting an AFC. Prior to submitting its Application, MID consulted with Commission Staff regarding the information and analysis to be provided regarding energy resources. MID's Application contained the information requested by Staff. Staff performed an analysis of the MEGS Project's potential effect on energy resources and reflected this analysis in its Initial Study.

In the Henrietta and Tracy projects the Staff likewise reviewed the proposed projects' potential effect on energy resources. As set forth above, the conclusion in both cases, reviewing the simple-cycle configuration permitted to operate at 8000 hours or more per year in the Central Valley of California, was that there would be no substantial impact on energy resources. Even though the Initial Studies for those projects were completed during an AFC review rather than an SPPE, the application of the Commission's findings in those projects to the comparable fact situation presented by MEGS is still valid. For two projects of comparable or larger size to MEGS, in the same geographic region of California as MEGS, using the same significance criteria as MEGS, the Commission clearly found, after looking at the gas use and power output of simple-cycle units permitted to run over 8000 hours per year, that such facilities would NOT have a substantial impact on the environment. Such findings are directly on point in the current proceeding since the significance criteria to be applied are exactly the same.

In Henrietta, the plant had an efficiency of 39.2 percent LHV; in Tracy, the plant had an efficiency of 32.8 percent; and, in MEGS the plant has a rated efficiency of 39.6 percent. (Ex. 22, p. 6-2). The Commission found that the two plants with lower operating efficiencies, operating for 8000 hours or more per year did not create a significant impact; however, in its Proposed Decision, the Commission would find that the MEGS project - with a higher efficiency than either of these other two projects - cannot operate more than 5000 hours per year without creating a significant impact. Such a conclusion cannot be supported in light of the findings of other recent cases, or on the basis of the record in the MEGS proceeding.

The findings in the Henrietta and Tracy Decisions, together with the lack of any evidence that there is a potential for impact, can only lead to the conclusion that the proposed limit on

MEGS operation set forth in ENERGY RESOURCES-1 is unnecessary, unsupported by the evidence in this case, and should be withdrawn.

Furthermore, limiting the operation of the MEGS Project to 5000 hours per year prevents MID from achieving its required operational flexibility. MID has sought to permit the MEGS facilities to allow MID to serve its own unexpected resource needs as well as other needs that may arise within the State. A 5000-hour limit on operation would not permit such flexibility. For example, MID's Prosym Production Cost Model shows the two MEGS units would need to run more than a combined 4000 hours in 2009 to serve its own load. This does not take into account any operations for emergency conditions, load and reserve sharing with neighboring utilities, or market sales. Limiting MEGS to 5000 hours of operation a year clearly does not allow sufficient operational flexibility for MID to efficiently manage its resources under all conditions. This hour limitation could cause MID, under emergency conditions, to run its less efficient McClure Peaker (heat rate about 13,000 BTU/kwhr HHV and efficiency of 30 percent) instead of MEGS. MID would have limited ability to supply the state in a crisis such as occurred in 2001. MID is also investigating a summer/winter swapping program of the MEGS facilities with Northwest utilities. A 5000-hour limitation would dampen this kind of relationship and result in additional construction of local generation or more costly purchases. MID spent \$1.5 million dollars to procure the necessary air credits to run both MEGS units 8760 hours at full output to maintain operational flexibility. Every aspect of plant design, including the addition of the Zero-liquid Discharge system, has been reviewed to ensure the potential (however remote) for continuous operation would have a less than significant environmental impact under CEQA. Limiting the operation of the MEGS Project nullifies these efforts. Again, MID submits that the proposed limit should be withdrawn.

2. NOISE

NOISE-1 should be revised to ensure clarity in how pure tone noise is to be evaluated.

The existing condition does not clearly establish the location or the measurement method to evaluate pure tones. The proposed modifications to clarify the last sentence of NOISE-1 are presented in ~~strike through~~/underline format below.

~~If any~~If the results of the survey at the nearest residence
indicated that pure tones are present, mitigation measures
shall be implemented to eliminate the pure tones.

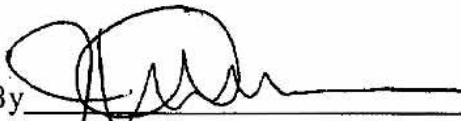
These changes are consistent with similar recently adopted decisions (Consummes and Palamor, among others), and ensure that compliance is determined at the nearest residence (as stated in the second paragraph of NOISE-1) and that pure tones are determined on the basis of one-third octave band analysis.

3. CONCLUSION

MID requests, based on the evidence in the record in this matter, that the proposed COE ENERGY RESOURCES-1 be removed. MID also requests that COE NOISE-1 be revised as described herein. With these two changes MID concurs with the Proposed Decision. MID asks that the full Commission accept the Committee's recommendation to exempt the MEGS Project from the Commission's AFC licensing review process.

Dated: November 25, 2003

Respectfully submitted,

By 
Joy A. Warren
Senior Staff Attorney
Modesto Irrigation District

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